

M/s. Uttar Pradesh State
Bridge Corporation Limited,
Government of Uttar Pradesh
Undertaking, having its
Registered Office at Setu
Bhawan, 16, Madan Mohan
Malavia Marg, Lucknow, U.P.
and its Project Office at
Ulhas Creek Bridge Project,
Kalyan - Bhiwandi Road,
near Kongaon Sarvali,
Kalyan, Maharashtra.

... Petitioners.

Versus

1. The Union of India
through its Joint Secretary,
Ministry of Law Finance
& Company Affairs, Aayakar
Bhawan, M.K. Road,
Churchgate, Mumbai.
2. The Commissioner of Central
Excise, Goa, having office
at the Custom House,
Panaji.
3. The Customs, Excise and
Gold (Control) Appellate
Tribunal, West Zonal Bench,
PNB House, Sir P.M. Road,
Fort, Mumbai.

... Respondents.

Mr. H.K. Maingi, Advocate for the Petitioners.

Mr. V.P. Thali, Senior Central Government Standing
Counsel for the Respondents.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 11th August 2003.

ORAL JUDGMENT (PER HARDAS, J.)

The petitioner prays for quashing and setting
aside the Order, dated 5th March 1999, to the extent the
Tribunal dismissed the Appeal No. E/4388/95 and for
quashing and setting aside the Order of the Tribunal,

dated 16th October 2001, to the extent it declined to restore the Appeal No. E/4388/95.

2. The facts in brief as are necessary for the decision of the appeal are set out hereunder:-

The petitioner is a company incorporated under the Companies Act, 1956 and is an undertaking of the Government of Uttar Pradesh. The petitioner is engaged in the construction of bridges and other civil works all over India. As part of its construction activities, the petitioner sets up site/project offices at the site of construction and those site/project offices are temporary in nature and upon completion of the construction activities, such site/project offices are closed.

3. The Commissioner of Central Excise, Goa, by his Order, dated 31st January 1995, confirmed the demand for Rs. 4,72,535.34 as duty of excise on piles, girders and bracings. By the aforesaid Order he also imposed on the petitioner a penalty of Rs. 20,000/- under Rule 173 for contravention of provisions of Rules 9(1), 173-B, 173-C, 173-G and 174 of the Central Excise Rules, 1944. The petitioner, being aggrieved by the aforesaid Order of the Commissioner of Central Excise, Goa, the respondent no. 2 herein, filed an Appeal No.

E/4388/1995 before the third respondent, namely, the Customs, Excise and Gold (Control) Appellate Tribunal, West Zonal Bench, Mumbai. The appeal of the petitioner was admitted on 12th May 1995.

4. It appears that notices were issued to the petitioner as well as to the advocate on record in the appeal regarding the date of hearing of the appeal, which was fixed on 25th January 1999. The counsel representing the petitioner before the Tribunal/third respondent by his letter, dated 21st January 1999, sought adjournment of the hearing of the appeal, which was fixed on 25th January 1999, on the ground that the petitioner had closed its Office at Goa and the counsel was trying to locate its 'whereabouts'. The Tribunal repelled the request for adjournment and by the Order, dated 25th January 1999 dismissed the appeal upholding the Order passed by the second respondent, the Commissioner of Central Excise, Goa. In the impugned Order of the Tribunal, the Tribunal observed thus:-

"Why it should be necessary to locate office long after appeals have been filed and stay applications disposed of which is also not indicated. We therefore decline to adjourn."

5. The petitioner subsequently filed an application for restoration of the appeal, but, the said

application came to be dismissed for want of prosecution as the notice of hearing of the said application was received by the petitioner on 29th December 2000 whereas the application for restoration was listed for hearing before the Tribunal on 15th December 2000. Due to the dismissal of its application for restoration, the petitioner on 22nd March 2001, filed another application for restoration of the appeal. The Tribunal by its impugned Order, dated 16th October 2001, dismissed the application for restoration of Appeal No. E/4388/95 and declined to restore the said appeal while it allowed the restoration of the Appeal No. E-4393/95 on the ground that the Tribunal in its Order had not dealt with the 'shuttering' and 'centering', which are stated to be the subject matter of the goods in the appeal. While dealing with the ground urged for restoration of the appeal, against which the present petition arises, the Tribunal came to the conclusion that the adjournment had been refused as the Tribunal was not convinced regarding the ground on which the adjournment was sought. The Tribunal also observed that if at all, it was necessary for some reason for the counsel to get in touch with the petitioner he could have done so at the registered office, which was indicated in the letterhead. The Tribunal then observed "if the counsel is unable to obtain instructions that he feels are required to pursue the appeal it is, in our judgment, his duty to give up

the matter or to argue the case to the best of his ability. Neither of this has been done." Alongwith the application for restoration of the appeal an affidavit of the counsel representing the petitioners before the Tribunal was filed. We reproduce herein the relevant paragraphs of the affidavit:-

"d) that sometime in the second week of January 1999, I received an intimation from CEGAT's registry stating that the appeals had been listed for hearing on 25.1.1999. The said notice was addressed to U.P. State Bridge corporation Cambarjua Canal on N+14A, N Banastarim, Goa and a copy thereof was also marked to me.

e) that as soon as I received the Notice, I telephoned their local office at Cumbarjua which is located about 20 Km away from my office. Since there was no response, I thought that perhaps the telephone was out of order. I also thought that since the notice would have been served on the Corporation, they would contact me. i waited for about a week and in the meanwhile, I again tried to contact them but there was again no response.

f) that ultimately I drove down to the site address to contact them personally but found that their office was now occupied by the local PWD. I was informed by the PWD people that U P State Bridge Corporation had moved out once the construction of the bridge was complete.

g) that on hearing this, I concluded that notice could not have been served on them. I then looked up the phone number of their registered office at Lucknow as appearing on the letter head and called up the said number. Again, there was no response I thought that perhaps after a number of years since the initial initiation of the

case, telephone numbers might have been changed after a lapse of six years.

h) that since, only a few days were left for the hearing and it would take quite some time to locate and contact the concerned person at Lucknow Office, since the appellant company is a large public sector undertaking. I sent an application for adjournment dated 21.1.1999 by speed post wherein I brought to the attention of the Hon'ble Tribunal that the appellants had closed down their office at Goa and that I was trying to locate their whereabouts but had not been successful so far.

i) that I also called up Shri Vipin Kumar Jain, Chartered Accountant who, I knew was handling a few excise cases of U P State Bridge Corporation at Mumbai and requested him to take up the matter with their Mumbai Office. I also informed Mr. Jain that since there was no office at Goa, it would be difficult for the Corporation to brief me and also arrange for an air ticket and hotel stay in Mumbai each time there is a hearing. I therefore suggested that the matters may be handled by him as he was already handling their Mumbai cases.

Mr. Jain, however, informed me that he contact their Mumbai Office. However, they had referred the matter to their Head Office for instructions as they could not decide it themselves. Subsequently when I received instructions from U P State Bridge Corporation to send the case papers to Shri Vipin Kumar Jain, I sent the case papers to Shri Jain in Mumbai. Subsequently, when I received order No. C-II/494-495/99WZB dated 5.3.1999. I also sent the same to Shri Vipin Jain."

6. The notice of hearing of the appeal was issued to the petitioner as well as to its counsel. From the affidavit of the counsel representing the petitioner, it

is clear that after completion of the project in Goa, the petitioner had closed its office in Goa. Thus, the petitioner was not served with the notice regarding the hearing of the appeal. The appeal was admitted on 5th June 1995 and was listed for hearing for the first time before the Tribunal on 25th January 1999. The principle of natural justice would require that the petitioner should be served with a notice of hearing of the appeal. Notice of hearing of the appeal had been issued to the petitioner but, because its office in Goa had been closed, the petitioner was not served with the notice of hearing of the appeal. The counsel representing the petitioner had sought adjournment for the reasons, which are disclosed in the affidavit accompanying the restoration application, that the counsel required instructions, financial mainly, for facilitating his visit and stay at Mumbai for the purpose of hearing of the appeal. The Tribunal has not, according to us, correctly appreciated the reasons sought for restoration, to determine whether sufficient cause had been made out by the petitioner for its absence before the Tribunal on the date of hearing. The petitioner has been certainly deprived of an opportunity of hearing before the Tribunal, particularly in view of the fact that the petitioner had not been served with the notice intimating the date of hearing of the appeal though the counsel representing the petitioner was so informed.

The Tribunal, in our opinion, was not correct in holding that if the counsel for the petitioner had been unable to obtain instructions his duty was to give up the case or to argue the case to the best of his ability. According to us, the material on record constituted sufficient cause for non-appearance before the Tribunal on the date of hearing. The impugned Order, therefore, of the Tribunal, dated 25th January 1999, dismissing the appeal of the petitioner and the impugned Order, dated 31st August 2001, insofar as it dismissed the application of the petitioner for restoration of Appeal No. E/4388/95 are wholly unsustainable and are liable to be quashed and set aside.

7. We, therefore, allow the Writ Petition and quash and set aside the impugned Orders as indicated above and direct the Tribunal to decide the Appeal of the petitioner No. E/4388/95 afresh within 12 weeks from today with due notice to the petitioner of the date of hearing of the Appeal. Rule made absolute on the above terms, with no order as to costs.

(F.I. REBELLO)
JUDGE.

(P.V. HARDAS)
JUDGE.

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